

APPEAL NO. 020400
FILED MARCH 21, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing on remand was held on January 24, 2002. In Texas Workers' Compensation Commission Appeal No. 011778, decided September 12, 2001, the Appeals Panel had remanded the case directing that the hearing officer request the designated doctor to reexamine the respondent (claimant) and calculate the claimant's impairment rating (IR), taking into consideration certain factors. The hearing officer did as directed, and the designated doctor, in a Report of Medical Evaluation (TWCC-69) and narrative report, both dated October 5, 2001, certified maximum medical improvement (MMI) with an 18% IR. The hearing officer, in the hearing on remand, adopted the 18% IR.

The appellant (carrier) again appeals, contending that the designated doctor's IR was contrary to a peer review and urging that the 9% IR assessed by Dr. M is correct. The claimant responds, arguing that all of the designated doctor's (three) reports are supportable but requesting that the hearing officer's "decision be reversed and that a new decision be rendered finding 30% [IR] as found by the designated doctor" (in his initial report). The claimant's response is timely as a response but is not timely as an appeal (see Section 410.202) and, therefore, will be considered only as a request to affirm the hearing officer's decision.

DECISION

Affirmed.

The background facts are set out in some detail in Appeal No. 011778, *supra*, and will not be repeated here. The parties stipulated that the MMI date was July 25, 2000. The claimant's compensable injury included surgically treated bilateral carpal tunnel syndrome, surgically treated bilateral cubital tunnel syndrome, and surgically treated left pronator syndrome. The claimant also suffers from preexisting nonwork-related cerebral palsy. As noted above, the designated doctor reexamined the claimant as the Appeals Panel had directed and assessed an 18% IR based on left and right sensory deficit from Table 10, and left and right motor deficit from Table 11, page 40 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Range of motion testing was invalidated.

Although the carrier agrees that the designated doctor provided "a thorough discussion about the neurological clinical examination . . . [and] references were to the correct charts for determining impairment for sensory deficits in the upper extremity [sic]," the carrier complains that the designated doctor "provided nothing in the way of specific information about the breakdown of the rating and the calculations used to arrive at the percentages of impairment awarded." The carrier presented no medical evidence that the designated doctor's October 2001 amended report was not done in accordance with the

AMA Guides or that the information the carrier references is required by the AMA Guides or Tex. W.C. Comm'n, 28, TEX. ADMIN. CODE § 130.1 (Rule 130.1).

In Texas Workers' Compensation Commission Appeal No. 012977, decided January 22, 2002, the Appeals Panel held:

The Commission [Texas Workers' Compensation Commission] has adopted [Rule 130.6(i)] effective January 2, 2002, which provides in relevant part that a designated doctor's amended report "is considered to have presumptive weight." The preamble to that rule makes clear that it is the Commission's intent that amendment and "clarification" are to be given presumptive weight regardless of the time it was rendered. The Appeals Panel has already addressed Rule 130.6(i) in Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002, where the Appeals Panel held that Rule 130.6(i) "does not permit the analysis of whether an amendment was made for a proper purpose or within a reasonable time."

We consider Rule 130.6(i) and Appeal No. 013042-s giving presumptive weight to the designated doctor's amended report as dispositive of this case.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of the registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
T.P.C.I.G.A.
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Michael B. McShane
Appeals Judge